

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-000281

03/10/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

LISA B BARNES

v.

MARIA A CINGEL

JAMES J SYME

FINANCIAL SERVICES-CCC  
PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since oral argument on February 10, 2003. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

The only issue raised by the Appellant concerns whether the trial court erred in denying Appellant's Motion to Suppress. Appellant filed a Motion to Suppress claiming that the Phoenix Police officers lacked probable cause to seize blood withdrawn from Appellant at the hospital.

In reviewing the trial judge's ruling on a Motion to Dismiss or suppress after an evidentiary hearing, an appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the witnesses.<sup>1</sup> This Court must review those factual findings for an abuse of

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<sup>1</sup> State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998).

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discretion.<sup>2</sup> Only when a trial court's factual finding or inference drawn from that finding is not justified or is clearly against reason in the evidence, will an abuse of discretion be established.<sup>3</sup>

In this case the trial judge found that the Phoenix Police officers had probable cause to believe that Appellant had committed a violation of A.R.S. 28-1381(A). Specifically, the trial judge recited the facts that the officers smelled an odor of alcohol, of a light or moderate nature, upon Appellant's person. And, Appellant was involved in a one-car accident.

Warrantless removal of blood from a person suspected of committing a violation of A.R.S. Section 28-1381(A) is authorized by statute when the following three conditions are met:

- (1) Probable cause exists to believe the accused has violated A.R.S. Section 28-1381(A)(1) or (A)(2);
- (2) Exigent circumstances are present; and
- (3) The blood is drawn for medical purposes by medical personnel.<sup>4</sup>

Appellant does not contest that probable cause existed to believe that she had committed A.R.S. 28-1381(A)(1) or (A)(2), and that the blood was drawn for medical purposes pursuant to A.R.S. Section 28-1388(E). Appellant contends that no exigent circumstances were present to justify the seizure by the Phoenix Police of two vials of blood drawn by medical personnel. However, this Court disagrees. Clearly, exigent circumstances existed in the very "evanescent nature of alcohol in the Defendant's blood stream" that "would dissipate over a relatively short period of time."<sup>5</sup>

IT IS THEREFORE ORDERED affirming the trial court's denial of Appellant's Motion to Suppress.

IT IS FURTHER ORDERED affirming the judgments of guilt and sentences imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

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<sup>2</sup> State v. Rogers, 186 Ariz. 508, 924 P.2d 1027 (1996).

<sup>3</sup> State v. Chapple, 135 Ariz. 281, 660 P.2d 1208 (1983); State v. Magner, supra.

<sup>4</sup> A.R.S. Section 28-1388(E).

<sup>5</sup> State v. Cocio, 147 Ariz. 277, 286, 709 P.2d 1336, 1345 (1985).